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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

BARBARA CLARK, Plaintiff and Appellant, v. SAN JOAQUIN COMMUNITY HOSPITAL et al., Defendants and Appellants.	F056620 (Super. Ct. No. S-1500-CV-245966) **OPINION**

APPEAL from a judgment of the Superior Court of Kern County. William D. Palmer, Judge.

James Ellis Arden for Plaintiff and Appellant.

Towle Denison Smith, Michael C. Denison and Justin C. Bentley, for Defendants and Appellants.

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PROCEDURAL HISTORY

This case has a long and complicated procedural history. It began nearly a decade ago. In 1994, plaintiff Barbara Clark suffered an on-the-job injury while employed by defendant San Joaquin Community Hospital (San Joaquin) and, as a result, filed a workers' compensation claim. Clark was kicked by a patient while employed as a delivery nurse at San Joaquin. She initially was seen by the emergency room physician at

San Joaquin and then sent home, but did not lose any further work time. The next day, however, several of her teeth fell out and she began experiencing severe headaches and pain in her jaw. Her medical problems continue to this day.

San Joaquin is a not-for-profit California corporation providing medical services as a health care facility and is a permissibly self-insured employer within California's workers' compensation system. (Lab. Code,[1] § 3700, subd. (b).) Defendant Adventist Health System/West (Adventist) operates as a not-for-profit California corporation and controls numerous health care facilities in the western United States, including San Joaquin. San Joaquin is a wholly owned subsidiary of Adventist. Adventist acts as the claims adjuster for workers' compensation claims filed by San Joaquin's employees.

In August 1995, through a workers' compensation proceeding, Clark was issued an order and award that acknowledged Clark's injury as work-related and characterizing it as an injury to her jaw and teeth. The order found no permanent disability, but awarded future medical treatment for her injury.

In 1997, Clark's hand became numb while working. She continued to experience jaw and neck pain, as well as problems with her vision. Despite defendants' objection, Clark was allowed to reopen her case in 1997. In 2000, a second order and amended award was issued acknowledging that Clark had sustained a work-related injury and expanding coverage of affected body parts to her head, jaw, teeth, neck, upper left extremity, and psyche; it also acknowledged that she suffered headaches. Future medical treatment was again ordered. The second award included both temporary and permanent disability awards. The second award was affirmed by the California Workers' Compensation Appeals Board (WCAB) in 2001.

Clark claimed that San Joaquin and Adventist failed to provide her with adequate treatment for her injuries by improperly objecting to the treatment recommended by her

[1]All further references are to the Labor Code unless otherwise noted.

physicians, particularly to spinal surgery, which was performed in 2006 despite defendants' objection to the treatment. This and other disputes about treatment are still being litigated in the workers' compensation proceeding (WCAB case No. BAK 0112784). Since defendants often disputed the nature, extent, and cause of Clark's injuries, as well as the type of medical treatment she needed, much of Clark's treatment was performed without prior authorization for payment. The provider would file a lien in the workers' compensation action in the hopes of receiving future payment after any objection to the claim was litigated in the workers' compensation forum. Many of these liens were ultimately paid upon resolution of the disputes before the WCAB, although many were denied as well.

In December 2001, Clark filed this action in Kern County Superior Court. Through a number of pretrial challenges, many of the causes of action initially pleaded by Clark have been resolved and are no longer a part of the case. The various pretrial procedural maneuverings resulted in our opinion in case No. F044977, issued in February 2005. The prior appeal is not relevant to the issues currently pending before this court.

In December 2003, after remand of the prior appeal, Clark filed her sixth-amended complaint, which alleged the two remaining causes of action, intentional infliction of emotional distress and violations of the federal Racketeering Influenced and Corrupt Organizations Act (RICO) (18 U.S.C. § 1961 et seq.). These two causes of action are the subject of this appeal.

In June 2005, the trial court sustained defendants' demurrer to the intentional infliction of emotional distress cause of action without leave to amend and sustained defendants' demurrer to the RICO cause of action with leave to amend. Clark then filed her seventh-amended complaint, which was redacted by the trial court to comply with the trial court's earlier order on the demurrer and contained only one cause of action. Defendants then filed a motion for summary judgment challenging the RICO cause of

action as pleaded in the redacted seventh-amended complaint. The motion was denied, and this denial is the subject of defendants' protective cross-appeal.

In 2006, the dispute over treatment and payment for treatment was tried in the worker's compensation proceeding, resulting in yet another amended order.

The remaining RICO cause of action went to trial in September 2008. At the start of trial, defendants filed a number of motions in limine seeking to exclude certain evidence, which were granted, including much of the proposed testimony of Dr. Park and the letters written to various treatment providers by defendants' attorney Daniel Hershewe. At the close of Clark's case, defendants moved for nonsuit. The court granted the motion, finding that (1) there was no evidence of a RICO violation; (2) there was no evidence of an enterprise; (3) the potential RICO damages were precluded by the statute of limitations; and (4) there was no evidence of illegal conduct. Defendants were awarded $61,145 in costs. Judgment was entered on September 23, 2008.

DISCUSSION

I. Exclusion of attorney's letters

Clark argues that the trial court erred in excluding a number of letters written by defendants' attorney Dennis Hershewe under Civil Code section 47, the "litigation privilege." The letters were written to various doctors and treatment providers during the pendency of the workers' compensation litigation and stated defendants' view that the treatment provided was for a condition or injury that was not included in the initial workers' compensation award or that the treatment was not reasonable or necessary under the later award(s). Clark's position is that these letters were sent with the unlawful intention of discouraging these providers from treating Clark and that they misrepresented the broad nature of Clark's workers' compensation award(s). Not all of the letters are included in her appendix, but "some" are part of it. We accept that the letters she has provided are a representative sample.

The litigation privilege is applicable to any communication required or permitted by law in the course of a judicial proceeding, whether made inside or outside the courtroom. It applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objectives of the litigation; and (4) that has some connection or logical relation to the action. If these elements are met, the communications are absolutely immune from tort liability. (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1057.) Civil Code section 47 applies to all causes of action, except malicious prosecution. (*Begier v. Strom* (1996) 46 Cal.App.4th 877, 882, citing *Ribas v. Clark* (1985) 38 Cal.3d 355, 364 [invasion of privacy]; *Green v. Uccelli* (1989) 207 Cal.App.3d 1112, 1124 [intentional infliction of emotional distress]; *Urbaniak v. Newton* (1991) 226 Cal.App.3d 1128, 1141 [privilege applied to invasion-of-privacy claim where communication was in workers' compensation case].)

The letters complained about were (1) written in the context of Clark's workers' compensation claim; (2) authored by defendants' attorney; (3) made to protect defendants' interests in the workers' compensation litigation; and (4) related to the workers' compensation litigation since they objected to the nature and extent of Clark's treatment for her industrial injury. The letters stated defendants' position on whether the treatment sought was covered by the original and subsequent workers' compensation awards. Defendants were permitted in the workers' compensation system to advocate for their position by challenging treatment they believed to be outside the scope of the workers' compensation award, even if they were later determined to be wrong. (§ 4603.2, subd. (b)(1).) In a number of instances, however, their objections were found to be correct.

Under the circumstances, we conclude the trial court correctly concluded that Hershewe's letters were excludable under the litigation privilege of Civil Code section 47.

II. Exclusion of Dr. Park's testimony

Clark also contends that the trial court erred in excluding the testimony of Dr. Park. Park, according to Clark's offer of proof, would have testified that Nancy Woitalla came to him for medical treatment of a work-related injury and told him that she had been unable to find a doctor in Hanford, her home community. According to Park, Woitalla told him that she could not find a doctor to treat her in Hanford because the medical community there was closely tied to Hanford Community Hospital, which is also owned by Adventist. Clark contends that Park would also testify that Woitalla had said she felt prejudiced by doctors in Hanford and that Adventist denied Woitalla treatment for her industrial injury.[2] Clark also contends that Park would testify that Woitalla's treatment was ultimately paid through private insurance instead of through the workers' compensation system (the "bill shifting" theory).

The court sustained the motion to exclude Dr. Park's testimony, finding that (1) Clark had failed to disclose Park as a potential witness[3] until the day of trial, and that the bill-shifting theory had never been disclosed; (2) there was no way to overcome defendants' hearsay objection to the evidence; (3) the evidence as presented in the offer of proof had little relevance to Clark's case; (4) any dispute Woitalla had about payment or treatment would be adjudicated in her own workers' compensation claim; and

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[2]Counsel also stated that Park's records would reflect that a number of doctors gave "widely conflicted opinions" about why Woitalla suffered her symptoms and that at least one symptom had only lately, and by one doctor alone, been tied to her industrial injury. It seems from this representation that there was justification for Adventist to dispute the treatment modality. In any event, whether defendants acted wrongfully in Woitalla's case would be litigated in her workers' compensation case, which is not before us and was not before the trial court.

[3]Woitalla apparently had also not been identified as a possible victim or witness of the RICO claim during discovery.

(5) under Evidence Code section 352, it would consume too much trial time to litigate Woitalla's assertions with little benefit to Clark's case.

On appeal, a trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. (*People v. Waidla* (2000) 22 Cal.4th 690, 717-718; *Ghadrdan v. Gorabi* (2010) 182 Cal.App.4th 416, 421.) Error occurs only where the trial court's decision exceeds the bounds of reason. (*Poniktera v. Seiler* (2010) 181 Cal.App.4th 121, 142; *People v. Funes* (1994) 23 Cal.App.4th 1506, 1519.) In addition, we review the trial court's ruling, not it's reasoning. (*Pipefitters Local No. 636 Defined Benefit Plan v. Oakley, Inc.* (2010) 180 Cal.App.4th 1542, 1548.)

Clark argues that Dr. Park should have been allowed to testify and present evidence of Woitalla's hearsay statements through his business records. She is mistaken for all the reasons stated by the trial court. First, the business-records exception only applies where the record is made as the result of firsthand information being reported by an informant having the business duty to observe and report an act, event, or condition. (See *Alvarez v. Jacmar Pacific Pizza Corp.* (2002) 100 Cal.App.4th 1190, 1205; *Hutton v. Brookside Hospital* (1963) 213 Cal.App.2d 350, 355.) Park's record did not establish the occurrence or nonoccurrence of an act, condition or event, but merely recorded Woitalla's opinion about why she needed to see Dr. Park for treatment and why she could not find a doctor in Hanford. Dr. Park had no firsthand knowledge of what Woitalla reported, i.e., what statements or events led her to believe the reason she could not find treatment in Hanford could be traced to Adventist. Woitalla was not available for cross-examination. (Evid. Code, § 1203.)

Further, Woitalla's comments to Park, whether recorded in his business records or not, are inadmissible, untrustworthy, multiple-level hearsay statements that are excludable under Evidence Code section 1200. Any hearsay objection to Park's in-court testimony about what Woitalla told him would be sustained. This testimony includes out-of-court statements made by Woitalla that were being offered to prove the truth of the

matter asserted, e.g., that Adventist was undermining Woitalla's medical treatment for a work-related injury. (Evid. Code, § 1200, subd. (a).) Many of the statements attributed to Woitalla would also be objectionable because they are speculative or represent Woitalla's unsubstantiated opinion about why she was having trouble obtaining medical care in Hanford.

Before the contents of a business record can be admitted, each level of hearsay must be evaluated and, overall, the contents must meet the threshold requirement of trustworthiness. (Evid. Code, § 1271; see also *People v. Ayers* (2005) 125 Cal.App.4th 988, 994-996; *Alvarez v. Jacmar Pacific Pizza Corp., supra*, 100 Cal.App.4th at pp. 1204-1205.) Given the conclusory nature of many of Woitalla's statements, the contents of Dr. Park's medical records relating to Woitalla's difficulty in receiving treatment in Hanford fall far short of the necessary trustworthiness requirement.

Finally, we agree with the trial court that the link between Woitalla's workers' compensation claim and Clark's workers' compensation claim is very tenuous on the evidence presented. Nothing in Dr. Park's testimony would support Clark's RICO cause of action, even if we were to accept that Woitalla's medical bills had been paid by private insurance, and that she could not find a doctor to treat her in Hanford. These two facts, even if true, do not provide evidence of unlawful conduct without a further factual showing that Adventist engaged in some type of improper bill shifting or other form of fraud.[4] This could not be established without fully litigating Woitalla's workers' compensation claim and examining how Adventist handled Woitalla's claim, which would be time consuming and confusing for the jury. The evidence was therefore also properly excludable under Evidence Code section 352. (*Sanchez v. Bay General Hospital*

[4] Clark fails to cite any authority to support her legal theory that having medical treatment paid for by private insurance or Medicare during the pendency of a workers' compensation proceeding is unlawful. It is Clark's burden to provide legal authority to support her claims. (*Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115.)

(1981) 116 Cal.App.3d 776, 794 [trial court properly exercised its discretion under Evid. Code, § 352 where evidence would consume enormous amounts of time with no enlightenment on key issues before court]; *Mitroff v. United Services Auto. Assn.* (1999) 72 Cal.App.4th 1230, 1243 [likelihood that court would have to make detailed inquiry into facts and contentions in other cases supports court's exercise of Evid. Code, § 352].)

III. Nonsuit

Clark contends the trial court erred in granting nonsuit on the RICO cause of action. We disagree.

"In determining whether a nonsuit was properly granted the reviewing court must resolve every conflict in testimony in favor of the plaintiff and at the same time indulge in every presumption and inference which could reasonably support the plaintiff's case. [Citation.] The rules governing the granting of a nonsuit, however, do not relieve the plaintiff of the burden of establishing the elements of [her] case. The plaintiff must therefore produce evidence which supports a logical inference in [her] favor and which does more than merely permit speculation or conjecture. [Citation.] If a plaintiff produces no substantial evidence of liability or proximate cause then the granting of a nonsuit is proper. [Citation.]" (*Jones v. Ortho Pharmaceutical Corp.* (1985) 163 Cal.App.3d 396, 402.)

At the close of Clark's case, the trial court granted defendants' motion for nonsuit, explaining that, although she had legal theories, Clark was unable to support those theories with facts. The court found that (1) there was no enterprise given that San Joaquin was a wholly owned subsidiary of Adventist; (2) there was no evidence of any damages resulting from RICO activity and none that occurred after 2001; (3) there was no evidence of any unlawful activity by defendants; (4) the damages shown by the evidence were barred by the statute of limitations; and (5) all the issues raised by Clark had already been fully litigated in the workers' compensation proceeding.

Again, we conclude the trial court is correct for all the reasons stated but find it unnecessary to address all the reasons given. In order to succeed on a RICO claim, Clark must prove that defendants caused injury to her business or property by engaging in a pattern of racketeering activity in connection with an enterprise that affects interstate commerce. (*Gervase v. Superior Court* (1995) 31 Cal.App.4th 1218, 1232-1234; *Miller v. Yokohama Tire Corp*. (9th Cir. 2004) 358 F.3d 616, 620; *Sun Sav. & Loan Assn. v. Dierdorff* (9th Cir. 1987) 825 F.2d 187, 191.) For an act or omission to qualify as racketeering activity, it must be included in the list of conduct described in title 18 of the United States Code, section 1961(1). The list is lengthy, although it does not include every criminal or civil wrong a person or entity might commit. Excluded actions, no matter how grievous, do not qualify as racketeering activity within the meaning of RICO. (*Gervase v. Superior Court*, *supra*, at p. 1241.)

Clark rested her RICO claim on an assertion that defendants engaged in mail and wire fraud, both activities listed in the statute (18 U.S.C. § 1961(1)(B)). The elements of mail and wire fraud are virtually identical: (1) formation of a scheme to defraud, (2) use of the United States mail [or wire] in furtherance of the scheme to defraud, and (3) specific intent to deceive or defraud. (*Miller v. Yokohama Tire Corp., supra,* 358 F.3d at p. 620.) The term "defraud" in the mail-fraud statute is given its established common law meaning. (*Neder v. United States* (1999) 527 U.S. 1, 21-25.) There are elements that must be proven with respect to each allegedly fraudulent statement. The factual misrepresentation in a fraud action must be identified and the knowledge of its falsity proven. (*Philipson & Simon v. Gulsvig* (2007) 154 Cal.App.4th 347, 363 [elements of fraud claim are misrepresentation, knowledge of falsity, intent to defraud, justifiable reliance, and resulting damage].)

We have carefully reviewed the record and see no evidence that defendants engaged in any unlawful activity, particularly mail or wire fraud. Clark never identified any allegedly fraudulent assertion made in any of the letters sent by Senior Claims

Examiner Carol Pope, or any other Adventist employee, to support her claim of fraud. Clark never identified any specific allegedly fraudulent statement made in any letter sent by attorney Hershewe, although as we have already stated, those letters were properly excluded as privileged. A general assertion that the letters *contained* misrepresentations is insufficient to support the predicate acts required under RICO. A general assertion that defendants *made* misrepresentations is insufficient. Clark must identify the statement she contends was false and prove its falsity. It is not enough that Clark *thinks* the letters misrepresented the various awards she received in the workers' compensation action; she has to prove each element of fraud.

As the plaintiff, it was Clark's burden at trial to pinpoint specific factual representations made and to prove that defendants knew them to be false; that someone relied on the falsity of the specific statements; and that Clark suffered damage as a result. The letters in this record, standing alone, prove nothing more than that they are what they purport to be: a lawful objection to the scope and nature of the treatment provided in a workers' compensation proceeding. As we have stated, the law permits employers in workers' compensation cases to object to bills they believe to be unauthorized or unreasonable, even if they are later proved wrong. (§ 4603.2, subd. (b)(1).)

Additionally, Clark has offered no evidence that defendants, or any of their agents or employees, did anything else unlawful. The law allows San Joaquin to be self-insured, even if they decide to be self-insured in order to reduce costs. (§ 3700, subd. (b).) San Joaquin became self-insured in the late 1970's or early 1980's, long before Clark's injury occurred. The law also authorizes *sub rosa* investigative videos, another of Clark's complaints of wrongdoing. (See Civ. Code, § 1708.8, subd. (g); *National Convenience Stores v. Workers' Comp. Appeals Bd.* (1981) 121 Cal.App.3d 420, 426 [appellate court grants that surveillance tape in workers' compensation proceeding is persuasive evidence].) Pope explained why she believed the videos were necessary. The videos

apparently were done discreetly, without harassment or public humiliation; Clark was unaware she was being taped for a number of years.

Another of Clark's complaints relates to the restraining orders sought and obtained in this case. She contends they were unnecessary and designed to harass her. The appropriateness of the restraining orders, however, was litigated in Placer County Superior Court. The court presumably decided these orders were necessary and authorized by law, since they remained in effect at the time of trial. Nor has Clark provided authority to support the inference that defendants acted unlawfully by assigning Pope the responsibility of reviewing and deciding whether to deny or reject Clark's claim. To the contrary, the pertinent regulations appear to contemplate this type of activity. (See Cal. Code Regs., tit. 8, § 15201, subd. (d) [defining administrator of self-insured employer as competent person who has obtained state certificate and who is responsible for day-to-day management of an employer's self-insurance workers' compensation program, including making and reviewing decisions relating to workers' compensation benefits].) Pope obtained her certificate in 1999 authorizing her to act as an adjuster for a self-insured employer. None of the identified complaints are mail or wire fraud under even the most elastic definition of these two crimes.

Clark's allegations have been reviewed by a number of state and local agencies, all of which have found no evidence of any unlawful activity by defendants. Although not conclusive, this is strong evidence that Clark's opinions are not supported by fact. Further, Clark has offered no evidence that any of her alleged damages—loss of her home, bankruptcy, loss of her savings, loss of her job—were the direct result of any fraudulent statement by Pope or Hershewe. On this record, any conclusion about what caused Clark's losses would be speculative.

The workers' compensation system is by nature an advocacy system. Each side is allowed to challenge the assertions and claims of the other party. An employer may challenge the claimed injury, the claimed needed treatment, or the claimed disability, etc.

Further, the workers' compensation scheme generally provides the exclusive remedy in California for the employer and the injured worker to resolve these disputes. (See *Marsh & McLennan, Inc. v. Superior Court* (1989) 49 Cal.3d 1, 8 [workers' compensation system encompasses all disputes over coverage and payment, whether from actions taken by employer, by employer's insurance carrier, or by independent claims administrator hired by employer to handle workers' claim]; accord, *Vacanti v. State Comp. Insurance Fund* (2001) 24 Cal.4th 800, 817-818.) We will not conclude, at least not on this record, that zealous participation in this legislatively designed system is unlawful activity sufficient to support a RICO claim.

Since we have concluded that Clark failed to meet her burden of establishing unlawful conduct within the definition of RICO, or to prove any damage as a direct result of unlawful conduct, we do not address the remaining reasons for the court's judgment of nonsuit. The failure of just one element defeats the cause of action or the remaining arguments and authorities raised by Clark in her briefing or at oral argument. (*Coleman v. California Yearly Meeting of Friends Church* (1938) 27 Cal.App.2d 579, 582 [absence of proof of any required element is fatal to recovery].)

IV. Intentional infliction of emotional distress

Clark's final assertion is that the trial court incorrectly sustained the demurrer to her intentional infliction of emotion distress cause of action without leave to amend. On review of an order sustaining a demurrer without leave to amend, we assume the truth of all properly pleaded material allegations. (*Preferred Risk Mutual Ins. Co. v. Reiswig* (1999) 21 Cal.4th 208, 212.)

The elements of the tort of intentional infliction of emotional distress are: (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. To be "outrageous," the complained-of

conduct must be so extreme as to exceed all bounds of that conduct generally tolerated in a civilized community. (*Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 1001; *Christensen v. Superior Court* (1991) 54 Cal.3d 868, 903.)

Clark's allegations are that defendants (1) conspired to obtain a certificate of self-insurance in order to oppress claimants during the adjustment of claims; (2) misrepresented and tampered with medical evidence; (3) directly interfered with Clark's medical and psychological care; (4) defamed Clark; (5) filed objections to claims without having a good-faith belief in their merits; and (6) refused to obey lawful court orders. Incorporated into the allegations of this cause of action are the preliminary allegations of the complaint, which place the more general allegations contained in her second cause of action in context, and which include: (1) San Joaquin was a permissibly self-insured employer; (2) Adventist was the adjuster for San Joaquin in its self-insured capacity; (3) defendants conspired to deprive Clark of her workers' compensation benefits and take advantage of their self-insured status in order to save money they should have had to spend to provide medical care to Clark; (4) at least one medical report was not submitted in the workers' compensation proceeding; (5) because of an unreasonable delay in furnishing benefits, defendants were charged with a 10-percent penalty for all further treatment, plus reimbursement of self-procured medical expenses; (6) defendants' attorney sent letters to Clark's medical providers falsely asserting that all their treatment of Clark had been disallowed, that their treatment was unnecessary and unreasonable, and that Clark was not legally able to reopen her case; and (7) defendants' attorney wrote a letter to Clark's therapist stating that Clark's claim for rehabilitation benefits was barred and what Clark had communicated to the therapist was nonsense.

Even accepting as true all of these allegations, Clark cannot establish that she had a viable cause of action for intentional infliction of emotional distress in her civil suit. First, as we have already concluded, the letters sent by Hershewe are privileged and cannot form a basis for the intentional infliction of emotional distress cause of action.

The litigation privilege applies to all torts except malicious prosecution. All the letters were written in the context of the workers' compensation proceeding. Civil Code section 47 therefore precludes any tort liability based on the writing of the letters. (*Rusheen v. Cohen, supra,* 37 Cal.4th 1048, 1057.)

Second, Clark has not alleged facts sufficient to take the intentional infliction of emotional distress cause of action outside the exclusivity doctrine applicable to workers' compensation cases. An employee who sustains an industrial injury is limited to recovery under the workers' compensation system. (§ 3600, subd. (a); *Fermino v. Fedco, Inc.* (1994) 7 Cal.4th 701, 708.) "The Workers' Compensation Act invests the WCAB with exclusive jurisdiction over disputes regarding an employee's right to compensation or an employer's liability. [Citations.]" (*Mitchell v. Scott Wetzel Services, Inc.* (1991) 227 Cal.App.3d 1474, 1481.) The exclusive-jurisdiction provisions extend to claims against the employer's workers' compensation insurer. Independent administrators of self-insured employers are treated as insurers. (*Ibid.*) Under the system, generally, employees are afforded relatively swift and certain payment of medical care and benefits without having to prove fault. In exchange, the wider range of damages potentially available in tort is eliminated. (*Torres v. Parkhouse Tire Service, Inc.* (2001) 26 Cal.4th 995, 1001.)

Employer actions intrinsic to the workers' compensation claims process is contemplated as part of this tradeoff, even when unfair, inefficient, or intentionally malevolent. An employer or insurer action "closely connected to the payment of benefits" can be addressed only in the workers' compensation scheme. (*Mitchell v. Scott Wetzel Services, Inc., supra,* 227 Cal.App.3d at p. 1481.) The employer's investigation of a claim falls within the exclusivity provision; so is an employer's denial or objection to a claim. (*Vacanti v. State Comp. Insurance Fund, supra,* 24 Cal.4th at p. 821; *Unruh v. Truck Insurance Exchange* (1972) 7 Cal.3d 616, 628-629.) Denying or objecting to claims for benefits is a normal part of the claims process, and misconduct stemming from

the delay or discontinuance of payments or objection to treatment is properly addressed by the WCAB. (*Vacanti v. State Comp. Insurance Fund, supra,* at p. 821.) California courts have routinely barred statutory and tort claims alleging that an employer/insurer unreasonably avoided or delayed payment of benefits even where the allegation is that the employer/insurer committed fraud in doing so. (*Ibid.,* fn. 8., citing a long list of California cases in agreement.)

Sections 4603.2 and 4622 give medical providers their sole remedy for delayed payment and impose a 10-percent penalty plus interest when the WCAB determines that the employer failed to pay for medical treatment within the specified time period. Sections 4603.2 and 4622 ensure that the bills of medical providers are promptly paid, and that protests or objections to the bills are promptly raised and adjudicated. Section 4622 grants the WCAB authority to "promulgate all necessary and reasonable rules and regulations to insure compliance with this section, and [to] take such further steps as may be necessary to guarantee that the rules and regulations are enforced."

Section 5814 provides the exclusive remedy for employees when payment of compensation for treatment has been unreasonably delayed or refused. This is the 10-percent penalty awarded to Clark after the WCAB found there had been an unreasonable delay in treatment. Section 5300 further states that the WCAB is the exclusive forum for resolving disputes relating to these remedies. (*Vacanti v. State Comp. Insurance Fund, supra,* 24 Cal.4th at pp. 817-818.) As a result of these provisions, "the workers' compensation system encompasses all disputes over coverage and payment …." (*Marsh & McLennan, Inc. v. Superior Court, supra,* 49 Cal.3d at p. 8.)

The "delay or refusal to pay benefits, even if done intentionally and with full knowledge of the hardship to the injured claimant, is insufficient to avoid exclusive jurisdiction. [Citations.] Exclusive jurisdiction is still the rule even though the delay or refusal creates emotional distress separate from the original injury [citations] or is otherwise egregious. [Citation.]" (*Mitchell v. Scott Wetzel Services, Inc., supra,* 227

Cal.App.3d at p. 1479.) The critical issue is whether the alleged acts, without regard to motivation, are a normal aspect of the employer relationship or claims process. If so, the exclusivity provisions of the workers' compensation scheme bar independent civil action. (*Vacanti v. State Comp. Insurance Fund, supra,* 24 Cal.4th at p. 822.)

Clark has alleged no act that falls outside the normal employer-employee relationship or claims process. While she has attributed a number of improper motives to defendants' conduct, she has not sufficiently alleged any acts outside what is provided for by the workers' compensation scheme. Her claim for intentional infliction of emotional distress is therefore barred by the exclusivity provision of section 3601, and the trial court correctly sustained the demurrer without leave to amend. Since we affirm the trial court's orders and the judgment, we do not address the issues raised by the cross-appeal.

DISPOSITION

The judgment of nonsuit and the order sustaining the demurrer without leave to amend are affirmed. Costs are awarded to defendants.

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Wiseman, Acting P.J.

WE CONCUR:

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Hill, J.

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Poochigian, J.